GERMAN YEARBOOK OF INTERNATIONAL LAW

VOLUME 19 · 1976

DUNCKER & HUMBLOT · BERLIN

GERMAN YEARBOOK OF INTERNATIONAL LAW

Volume 19

GERMAN YEARBOOK OF INTERNATIONAL LAW

JAHRBUCH FÜR INTERNATIONALES RECHT

Volume 19 · 1976

founded by

RUDOLF LAUN · HERMANN VON MANGOLDT

Editors:
Jost Delbrück · Wilfried Fiedler · Wilhelm A. Kewenig
Assistant Editor: Eckart Wehser

Institut für Internationales Recht an der Universität Kiel

DUNCKER & HUMBLOT / BERLIN

The Editors and the Institut für Internationales Recht do not make themselves in any way responsible for the views expressed by contributors

This Yearbook may be cited:

GYIL Vol. 19 (1976)

Communications should be addressed to:

The Editors
German Yearbook of International Law
Institut für Internationales Recht
an der Universität Kiel
Olshausenstrasse 40/60
D-2300 Kiel 1

All rights reserved
© 1977 Duncker & Humblot, Berlin 41
Printed by Vollbehr u. Strobel, Kiel, Germany
ISBN 3 428 04055 4

FOREWORD

For a long time international lawyers in Germany have rightfully been complaining of persisting language barriers which deny the results of their researches due attention in the international forum. This linguistic isolation can only be overcome by using the English language. The editors of the German Yearbook of International Law are resolved to use this device and, accordingly, from volume 19 onwards, are adopting the English language even for the title pages of the Yearbook.

Unfortunately the editorial staff does not have sufficient funds at its disposal to provide English translations of all the contributions written in German. But it is doing its best to encourage the German authors more to write their essays directly in English. The staff has, however, succeeded in widening considerably the circle of foreign authors and its efforts have meant that the next Yearbook to appear will be largely English in content.

The new little pages also take account of the staff changes in the Institute for International Law at the University of Kiel. My colleagues Jost Delbrück and Wilfried Fiedler have joined the editorial staff as co-editors. A further change on the title page is that the assistant responsible for editing each individual Yearbook will henceforth be mentioned there.

I hope that in spite of these changes our old friends will remain loyal in their support of the Yearbook and, moreover, that we may succeed in gaining new friends.

Kiel, August 1977

Wilhelm A. Kewenig

VORWORT

Die deutsche Völkerrechtswissenschaft beklagt seit langem mit Recht, daß ihre Arbeitsergebnisse in der internationalen Diskussion wegen bestehender Sprachbarrieren kaum beachtet werden. Der einzige Weg aus dieser sprachlich bedingten Isolation führt über die Verwendung der englischen Sprache. Das Jahrbuch für Internationales Recht ist entschlossen, diesen Weg zu gehen. Aus diesem Grunde stellt es mit Band 19 auch seine Titelei auf die englische Sprache um.

Bedauerlicherweise verfügt die Redaktion des Jahrbuches nicht über ausreichende finanzielle Mittel, um alle Beiträge, die in deutscher Sprache verfaßt sind, selbst in das Englische zu übertragen. Sie wird jedoch bemüht sein, die deutschen Autoren mehr und mehr dazu zu bewegen, ihre Aufsätze unmittelbar in Englisch zu verfassen. Außerdem ist es gelungen, den Kreis der ausländischen Autoren erheblich zu erweitern. Schon das nächste Jahrbuch wird deshalb überwiegend auch in seinem Inhalt in englischer Sprache erscheinen.

Die Titelei des Jahrbuches ist außerdem der veränderten personellen Situation im Institut für Internationales Recht der Universität Kiel angepaßt worden. Die Kollegen Jost Delbrück und Wilfried Fiedler sind als Mitherausgeber der Redaktion beigetreten. Außerdem erscheint der für die redaktionelle Betreuung des jeweiligen Jahrgangs zuständige Assistent nunmehr auf der Titelseite.

Ich hoffe, daß trotz dieser Umstellung die alten Freunde dem Jahrbuch treu bleiben und es uns außerdem gelingt, neue Freunde hinzuzugewinnen.

Kiel, August 1977

Wilhelm A. Kewenig

INHALT

Abhandlungen

A. J. P. TAMMES: International law; some themes of discussion 11

WILFRIED FIEDLER: Zur Verbindlichkeit einseitiger Versprechen im Völkerrecht 35

ONDOLF ROJAHN: 200 sm — Wirtschaftszone, Meeresfreiheit und Hochseefischerei — Völkerrechtliche Entwicklungslinien 73

RÜDIGER WOLFRUM: Der Schutz der Meeresforschung im Völkerrecht 99

INGO VON MÜNCH: Freedom of Navigation and the Trade Unions 128

PETER FISCHER: Das Internationale Wirtschaftsrecht — Versuch einer Systematik 143

BERNHARD GROSSFELD: Grundprobleme des Außensteuergesetzes 177

MARIE-ELISABETH R. COUSIN: Le Projet de la C.N.U.C.E.D. de Code international de Conduite pour le Transfert des techniques 199

YEHUDA Z. BLUM: State Response to Acts of Terrorism 223

LUZIUS WILDHABER: Die Koalitionsfreiheit gemäß Art. 11 EMRK 238

EUGEN DIETRICH GRAUE: Domicil, Nationality, and the Proper Law of the Person 254

CHRISTIAN TOMUSCHAT: Tyrannei der Minderheit? Betrachtungen zur Verfassungsstruktur der Vereinten Nationen 278

HANSPETER NEUHOLD: Die Einhaltung des Völkerrechts in einer außenpolitischen „Kosten-Nutzen-Analyse" 317

HANNA WEGE: Rechtliche Legitimation eigenständiger streitschlichtender Aktivitäten des UN-Generalsekretärs in friedensbedrohenden Konfliktsituationen 352

WALTER P. VON WARTBURG: Die Stellung des nationalen Gesetzgebers im System der internationalen Drogenmißbrauchs-Kontrolle der Vereinten Nationen 379

EIBE H. RIEDEL: Confrontation in Western Sahara in the Light of the Advisory Opinion of the International Court of Justice of 16 October 1975 — A Critical Appraisal 405

Berichte

SIEGFRIED MAGIERA: Die Rechtsprechung des Internationalen Gerichtshofes im Jahre 1975 443

HANS-GERD KAUSCH: Die Tätigkeit der International Law Commission im Jahre 1975 455

HANS-JOACHIM SCHÜTZ: Die Tätigkeit des Europarats im Jahre 1975 467

MANFRED ZULEEG: Die Europäischen Gemeinschaften im Jahre 1975 484

WULF HERMANN: Die Tätigkeit des Nordischen Rates im Jahre 1975 494

Schrifttum

Buchbesprechungen

Sammelbesprechungen

Selbstbestimmungsrecht der Völker und Dekolonisation *(Eibe H. Riedel)* 509

THÜRER, DANIEL: Das Selbstbestimmungsrecht der Völker

BURLET, JACQUES DE: Nationalité des personnes physiques et décolonisation

BREUNIG, GÜNTER: Staatsangehörigkeit und Entkolonisierung

Luft- und Weltraumrecht *(Peter Rinio)* 512

Festschrift Meyer: Beiträge zum Luft- und Weltraumrecht

GARMIER, JACQUES: L'UIT et les télécommunications par satellites. Organisation Internationale et Relations Internationales

FROHN, RAINER: Internationalisierung von Himmelskörpern

Internationales Kaufrecht *(Eckart Wehser)* 515

MERTENS, HANS-JOACHIM / REHBINDER, ECKARD: Internationales Kaufrecht

DÖLLE, HANS (Hrsg.): Kommentar zum Einheitlichen Kaufrecht

Völkerrechtliche Anerkennung und Staatennachfolge *(Eckart Wehser)* 516

SALMON, JEAN J.: La Reconnaissance d'État

BELKHERROUBI, ABDELMADJID: La naissance et la reconnaissance de la République algérienne

TRU, NGUYEN-HUU: Quelques problèmes de succession d'États concernant le Viet-Nam

Einzelbesprechungen

ARX, HERBERT JULIUS VON: Atombombenversuche und Völkerrecht *(Uwe Jenisch)* 518

BEYERLIN, ULRICH: Die humanitäre Aktion zur Gewährleistung des Mindeststandards in nicht-internationalen Konflikten *(Hans-Gerd Kausch)* 519

BRANDT, NIELS: Das Interamerikanische Friedenssystem, Idee und Wirklichkeit *(E. O. Czempiel)* 520

DIAS, R.W.M. / MARKESINIS, B.S.: The English Law of Torts *(Eibe H. Riedel)* . . 523

L'Égalité (Vol. IV) *(Eibe H. Riedel)* 524

EHRENZWEIG, ALBERT A.: Psychoanalytische Rechtswissenschaft *(Reinhold Thode)* 526

HACHENBURG: Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbH) *(Hans-Gerd Kausch)* 527

LAMMICH, SIEGFRIED: Das Justizrecht der Volksrepublik Polen *(Teresa Pusylewitsch)* 528

KLEIN, EBERHARD: Umweltschutz im völkerrechtlichen Nachbarrecht *(Hans-Gerd Kausch)* 529

LARENZ, KARL: Methodenlehre der Rechtswissenschaft *(Reinhold Thode)* 530

Festschrift Menzel *(Manfred Zuleeg)* 532

Répertoire suisse de droit international public *(Hans-Gerd Kausch)* 534

RYFFEL, HANS: Rechtssoziologie *(Reinhold Thode)* 535

WEINBERGER, OTA: Studien zur Normenlogik und Rechtsinformatik *(Reinhold Thode)* 536

WIKTOR, CHRISTIAN L.: Unperfected Treaties of the United States of America 1776—1976 *(Hans-Gerd Kausch)* 536

Veröffentlichungen des Instituts für Internationales Recht an der Universität Kiel

FLECK, DIETER (Hrsg.): Beiträge zur Weiterentwicklung des humanitären Völkerrechts für bewaffnete Konflikte *(Frits Kalshoven)* 537

KEWENIG, WILHELM A. (Hrsg.): Die Vereinten Nationen im Wandel *(Konrad Ginther)* 549

RIEDEL, EIBE H.: Kontrolle der Verwaltung im englischen Rechtssystem *(Hans-Uwe Erichsen)* 552

Eingegangene Bücher 554

Verzeichnis der Mitarbeiter 556

ABHANDLUNGEN

International law: some themes of discussion*

A. J. P. Tammes

In this paper an attempt is made to describe international law from a variety of angles which are not very often taken as themes for discussion. It is hoped that even a schematic treatment will put certain well known problems into a new perspective, while less known problems will be revealed. Though they are problems of a general nature, they may be of some relevance in making concrete decisions in certain instances. As will be seen, there is a coherence between the several themes of discussion in that solutions found in one part may be used elsewhere.

After some trial and error the approaches chosen appeared to be the most promising for an attempt to touch upon a range of problems running across the entire breadth of international law, which is not to say that they would be irrelevant to other fields of law. Reduced to their simplest designations our headings are: language; reality; fiction; persons; conflicts.

I. Language

One of the first things that comes to mind when we reflect on law is the language by which its directives are transmitted from one place within the legal system to another.

Just as in national law, the principal kind of language used in international law is an agreed natural language, for instance one of the official languages of the United Nations. Natural language is the only vehicle for transmission of complex or abstract concepts such as justice, discrimination and abuse; on the other hand it is prone to misinterpretation.

Non-verbal means of symbolic communication are also used in suitable cases where relatively simple thoughts are to be transmitted, such as delimitation

* The author's grateful acknowledgments are due to Mr. *A. D. Stephens* of the T.M.C. Asser Institute in the Hague for his valuable suggestions on the language of the present paper.

by means of boundary-posts or warning-shots, or claims of sovereignty by flags[1].

Even signs which are not agreed or conventionalized, but are well understood in their context, may be quite effective in conveying will or desire from one person to another and so influencing the latter's conduct. Fleet demonstrations, mobilizations and military manoeuvres provide historical cases of such significant behaviour.

1. Degrees of insistence

There are marked degrees of insistence in the natural language used in international practice for directive purposes. The language of treaties is written à prendre ou à laisser, while more subtle, urging language is often used in the diplomatic practice of formulating "voeux", "recommendations", "declarations" and "conciliatory" decisions, as well as other types of proposals and advisory statements issued by international conferences and other *ad hoc* or permanent bodies. The practice of emitting such weak but solemn directives originated, at the congresses and conferences of the mid-nineteenth century, from the need to prevent the results of the deliberations from being lost, while, on the other hand, lacking the means of presenting texts destined to become binding[2]. When this practice became an established technique of international organization, a tendency developed to attach a quasi-legal significance to it, beyond the obligation, sometimes spelt out in international constitutions, of the addressee to bring the recommendation before the competent national authority for further action[3].

It would seem that the characteristic element of recommendations, or similar hortatory language under other names, remains the statutory freedom of the addressee to take an independent position with regard to the recommendation, even though he might be under a legal duty of serious consideration of its text. He still may reject its factual premises and the value-choices it adopts, and have his own information on the way in which some impressive majority has come into existence; things that may not be questioned with regard to a recommendation covered by some form of consent.

In this context mention may be made of another kind of prescriptive language leaving a latitude of judgment to the addressee; this may be employed

---

[1] For a well-known example of such claim of title, see the Temple Case, International Court of Justice, Reports of Judgments (ICJ Reports) 1962, 6—146 (30).

[2] For a historical survey, *A. J. P. Tammes,* Decisions of international organs as a source of international law, Recueil des Cours 1958 II, 261—364 (292 ff).

[3] ILO Constitution, Art. 19, para. 6 (b). And see in general Judge *Hersch Lauterpacht's* separate opinion in South-West Africa Voting Procedure, Advisory Opinion, ICJ Reports 1955, 90—123 (120).

where ends rather than means are formulated and no detailed description is presented of the kind of conduct that is imposed, recommended or prohibited. Instead, it is left to the receiver's judgment to determine to the best of his knowledge what ways and means probably lead to the desired end. A well known expression of such a directive technique is to be found in para. 3 of article 189 of the Treaty establishing the European Economic Community "Directives shall bind any Member State to which they are addressed, as to the result to be achieved, while leaving to domestic agencies a competence as to form and means". (Clearly "directive" has more specific meaning here than the general one used in this paper). The directive following from a *pactum de contrahendo* exemplifies the case where — apart from the *bona fide* duty to negotiate — such a wide choice of ways of reaching the ends of the contract is implied that the sense of being bound may be lost.

The interpretation of an expression of ends is not only concerned with the communication problem of tracing the intentions behind the ends, but may also involve the empirical question of whether or not certain means are conducive to certain ends. In formulating ends the source has released itself from reflecting on all the alternatives as to means. Thus, there may be no specific intentions as to means, as opposed to the case where some possible application of the directive is overlooked by the source, and has to be filled in by the interpreter in the spirit of the sender, „nicht Nachdenken eines Vorgedachten, sondern Zuendedenken eines Gedachten", as it is described by *Gustav Radbruch*[4].

2. Unaddressed prescriptive language

Besides prescriptive language that is addressed to international persons, there is language that is not so addressed and is, or was, used for prescriptive purposes among others, such as "third States" or participants in a foreign legal system, existing or extinct. Such extraneous sources may contain an exemplary model of conduct which one is ready to follow and adopt for one's own conduct. Reference may be made to international "regimes" adopted by others, precedents, private law analogies and venerable adagia. They are available for reception or other acceptance, independently of the national or international lgeal system or the historical context in which they are found and from which they are borrowed; in other words, they do not originate from a source with which the borrower is hierarchically connected. A number of general principles of law to which Article 38 of the Statute of the International Court of Justice refers, comply with this description.

---

[4] Rechtsphilosophie, 4. Auflage, 211. And see *Ilmar Tammelo,* Treaty Interpretations and Practical Reason, 1967, 51.